Am. St. Rep. 300; *Summerfield* v. *Western Union Tel. Co.*, 87 Wis. 1, 57 N. W. 973, 41 Am. St. Rep. 17; *Small* v. *Lonergan*, 81 Kan. 48, 105 Pac. 27, 25 L. R. A. (N. S.) 976.

Injury to the plaintiff's reputation and feelings may be alleged, proved and recovered for in damages for the unlawful entering and searching of his house for stolen goods. *Anonymous*, Minor (Ala.) 52, 12 Am. Dec. 31; *Larthet* v. *Forgay*, 2 La. Ann. 524, 46 Am. Dec. 554; *Fennemore* v. *Armstrong*, 6 Boyce (Del.) 35, 96 Atl. 204; 35 Cyc. 1277. The unlawful search of a person's home is such a wrongful act as to cause mental suffering and humiliation for which the defendant must respond in actual damages, though such damages are not capable of exact measurement in dollars and cents, and though the act did not affect such person's standing in the community. *Krehbiel* v. *Henkle*, 152 Iowa 604, 133 N. W. 115; 24 RULING CASE LAW, 727, 728. So, damages were held recoverable for mental suffering as a consequence of an unlawful search of the dwelling of a widow against her consent in the night, when she was alone in the house, for the avowed purpose of connecting her son with a burglary. *Shall* v. *Minneapolis, etc., R. Co.*, 156 Wis. 195, 145 N. W. 649, 50 L. R. A. (N. S.) 1151. In *Weyer* v. *Wegner*, 58 Tex. 539, an action for unlawful search, it was held that evidence of insulting conduct on the part of the defendant while making the search should be taken into consideration in fixing the damages.

Although it is not a question touched upon in the instant case, it is to be noted that in an action for unlawful search it is no defense to say that the plaintiff was a thief or did in fact have the stolen property upon his premises or person. The doctrine or rule of probable cause has no application, unless in mitigation of exemplary damages. *McClurg* v. *Brenton*, 123 Iowa 368, 98 N. W. 881, 101 Am. St. Rep. 323, 65 L. R. A. 519. Nor does the fact that the accused, in order to prove his innocence, consented to the search, relieve the defendant from liability. *Regan* v. *Harkey*, 40 Tex. Civ. App. 16, 87 S. W. 1164.

JURY—WOMEN NOT QUALIFIED BY SUFFRAGE AMENDMENT.—Under the State constitution women were entitled to vote. The board of assessors and the commissioner of jurors refused to include in the jury list women citizens of the county. On the ground that the right of jury service is incidental to suffrage, an application was made for an order for a peremptory writ of mandamus directing the board and commissioner to complete the jury list by including the names of qualified women. *Held*, the writ of mandamus is denied. *In re Grilli*, 179 N. Y. Supp. 795. For discussion of principles involved, see NOTES, p. 589

LANDLORD AND TENANT—SURRENDER OF LEASED PREMISES BY OPERATION OF LAW.—The plaintiff corporation, lessees of a building for a term of years, entered into an oral agreement with the lessors whereby they, the lessees, should move out while the leased building was being destroyed and a new one erected in its place. On the strength of this agreement the lessors made contracts for the erection of the new building and operations to that end were begun. The plaintiff then sought

to enjoin the destruction of the leased building. *Held,* the injunction is denied. *Peoples Express, Inc.* v. *Quinn* (Mass.), 126 N. E. 423.

An oral surrender of a term for years, executed by the relinquishment of possession by the tenant and the resumption of possession by the landlord, i. e., by operation of law, is excluded from the general operation of the statute of frauds and is therefore valid. *Lamar* v. *McNamee,* 10 Gill & J. (Md.) 116, 32 Am. Dec. 152; *Boyd* v. *Gore,* 143 Wis. 531, 128 N W. 68, 21 Ann. Cas. 1263. This rule also obtains in England. See *Nickells* v. *Atherstone,* 10 Q. B. 944, 59 E. C. L. 943, 16 L. J. Q. B. 371, 11 Jur. 778, 15 Eng. Rul. Cas. 512; *Phené* v. *Popplewell,* 12 C. B. (N. S.) 334, 104 E. C. L. 334, 31 L. J. C. P. 235, 15 Eng. Rul. Cas. 518.

But an executory oral agreement to surrender, which has not been consummated by the delivery of possession to the landlord, is inoperative under the provisions of the statute. *Lammott* v. *Gist,* 2 Har. & G. (Md.) 433, 18 Am. Dec. 295. See *Armory* v. *Kannoffsky,* 117 Mass. 351, 19 Am. Rep. 416.

Though the elements of a surrender by operation of law be lacking, yet where one party has been induced to make expenditures upon land, or otherwise to change his situation materially in reliance upon the performance of an oral agreement, the other party is held, by force of his acts, declarations or silent acquiescence, which have misled the other to his harm, to be estopped from setting up the statute of frauds. *Fenner* v. *Blake* (1900), 1 Q. B. 426; *Davis* v. *Downer,* 210 Mass. 573, 576, 97 N. E. 90.

The decision in the instant case seems sound upon reason and authority.

LIBEL AND SLANDER—IMPUTATIONS AFFECTING BUSINESS ACTIONABLE PER SE—DISPARAGEMENT OF QUALITY.—The defendant, who conducted a meat market opposite that of the plaintiff, said to a purchaser of meats from the plaintiff, "That meat you are buying is diseased, rotten, and tubercular." To another person, a meat dealer, the defendant declared that all the plaintiff's meat was bad, that his whole store was full of tuberculosis, and that his meat was rotten. The plaintiff brought an action for slander, alleging no special damage. *Held,* the words are slanderous *per se. Panster* v. *Wasserman,* 180 N. Y. Supp. 718.

In general, averment and proof of special damage is essential to the maintenance of an action for slander of a person, unless the charge is of so grave a character that special damage will be presumed. *Studdard* v. *Trucks,* 31 Ark. 726; *Doyle* v. *Kirby,* 184 Mass. 409, 68 N. E. 843. But when the words spoken have such a relation to the profession, occupation, trade or calling of the plaintiff that they directly tend to injure him therein, they are actionable *per se,* and special damage need not be alleged and proved. See *Blumhardt* v. *Rohr,* 70 Md. 328, 17 Atl. 266; *Singer* v. *Bender,* 64 Wis. 169, 24 N. W. 903.

But, if the words are not published concerning the trader or manufacturer in his occupation or calling but concerning the quality of the goods he makes or deals in, special damage must be shown. *Swan* v. *Tappan,* 5 Cush. (Mass.) 104; *Cleveland Leader Printing Co.* v. *Nether-*